

N. Y. *Repts* *Dr. M* *Trials*

IN THE

SUPREME COURT

OF THE

State of New York.

Bind this cover in front

THE PEOPLE,
vs.
VEDDER PETERS.

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**CERTIORARI.**  
~~~~~

JOHN L. HILL, District Attorney.

MITCHELL & BEATTIE, Attorneys for the Prisoner.



SCHENECTADY:

BRADT & THAYER, BOOK AND JOB PRINTERS, 168 STATE STREET,

1868.

IN THE
SUPREME COURT¹

IN THE STATE OF NEW YORK.

SUPREME COURT.

THE PEOPLE,
agt.
VEDDER PETERS

}

THE PEOPLE OF THE STATE OF NEW YORK :

*To the Judges of our Court of Sessions in and for our County
of Schenectady, send Greeting:*

WHEREAS, we have understood, on the petition of John L. Hill, our District Attorney for our County of Schenectady, that lately before you, a certain indictment was found² and presented against one Vedder Peters, for manslaughter in killing and slaying one Edward Gleason; to which indictment the said Peters, upon being arraigned, did plead "not guilty," and upon which plea, the said Peters was tried by a jury before you, at a Court of Sessions, held in and for our said County of Schenectady, on the 16th day

3 of January, A. D., 1868, and we being willing, for certain reasons, that the said indictment and all other proceedings concerning the same, before you remaining, should be certified and returned by you into our Supreme Court, our Justices thereof, do command you that you do certify and return the same unto our Justices of our Supreme Court, with all the proceedings thereto appertaining, at a General Term of our said Supreme Court, to be held on the 6th day of April, A. D., 1868, at the Court House in Schenectady, in and for the Fourth Judicial District of the State of New York, so that our said Justices may further act thereon as of right and according to law ought to be done, and have you then and there this writ.

4 Witness, Platt Potter, one of the Justices of our said Supreme Court, at Schenectady, in our said County of Schenectady, this 25th day of March, A. D., 1868.

JAMES G. CAW, CLERK.

MITCHELL & BEATTIE,
Atty's for the Prisoner.

JOHN L. HILL,
District Attorney.

I allow the within writ this 25th day of March, 1868.

PLATT POTTER,
Justice of the Supreme Court.

5 Filed March 25th, 1868.

JAMES G. CAW, Clerk.

COURT OF SESSIONS—SCHENECTADY COUNTY.

THE PEOPLE, &c.,
 vs.
 VEDDER PETERS,

}

The answer of the Judges of the Court of Sessions, in and for the County of Schenectady, to the within writ, appears by the Schedules hereunto annexed, containing a transcript of the indictment in the said writ mentioned, with all proceedings thereto appertaining, which we certify⁶ under the seal of our said Court within mentioned, as in the writ we are commanded.

In witness whereof we have hereunto set our hands
 [L. s.] and affixed the seal of our said Court at Schenectady, this 25th day of March, A. D., 1868.

J. S. LANDON,
 County Judge.

A. W. TOLL,
 H. M. AIKEN,
 Justices of Sessions for Schenectady County.

7

JAMES G. CAW, Clerk.

At a Court of Sessions, holden in the City Hall of the City of Schenectady, in and for the County of Schenectady, the twelfth day of January, in the year of our Lord one thousand eight hundred and sixty-six, before the Hon. Judson S. Landon, County Judge of Schenectady County, and Nicholas J. Van Vranken and Richard Walpole, the two Justices for Sessions in and for the County of Schenectady, assigned to keep the Peace in said County, and also to hear and determine divers felonies, trespasses and other misdemeanors, in said County perpetrated.

8

SCHENECTADY COUNTY—ss.

The Jurors for the People of the State of New York, and for the body of the County of Schenectady, to wit: Robert Schermerhorn, Nicholas Barhydt, William N. Becker, John Bently, John P. Beckly, William H. Anthony, Frederick W. Clute, Dewitt McDonald, John C. Flansburgh, Robert Ellis, Matthew B. Gregg, William H. Curtiss, John H. Furgerson, Francis Vedder, Francis Van DeBogert, George W. Moon, Stewart B. Liddle, Benjamin Duane, then and there being sworn and charged upon their oath present: That Vedder Peters, of the First Ward, in the City of Schenectady; not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on the twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-five, at the City of Schenectady aforesaid, in the County of Schenectady and State of New York, with force and arms, in and upon one Edward Gleason, in the Peace of God, and of the said people, then and there being, feloniously, will-
10 fully and in the heat of passion, did make an assault, and then and there, with his hands, he, the said Vedder Peters, him, the said Edward Gleason, feloniously did beat, and then and there with his feet, and with his boots on his feet, he, the said Vedder Peters, him, the said Edward Gleason,

feloniously and in the heat of passion, in and upon the head of him, the said Edward Gleason, and in and upon the head, neck and face, of him, the said Edward Gleason, did strike, kick and beat, without the design to produce death, giving to the said Edward Gleason, then and there, by the said striking, kicking and beating, and in and upon 11 the head, neck and face of him, the said Edward Gleason, several violent blows, wounds and contusions, and in and near the region of the left temple of him, the said Edward Gleason, and without the design to produce death, one mortal wound, of which said mortal wound the said Edward Gleason, from the said ~~12th~~^{9th} day of October, in the year of our Lord one thousand eight hundred and sixty-five, until the ~~12th~~^{9th} day of October, in the year aforesaid, did languish and languishing did live; on which said last mentioned day of October, in the year aforesaid, the said 12 Edward Gleason, of the mortal wound, aforesaid at the city aforesaid, died. And so the jurors aforesaid, do say that the said Vedder Peters, in the manner and form aforesaid, and at the time and place aforesaid, feloniously, in the heat of passion, but without the design to effect death, involuntarily did, him, the said Edward Gleason, kill and slay against the form of the Statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

JOHN L. HILL,
District Attorney.

[Endorsed.]

SCHENECTADY COUNTY COURT OF SESSIONS.

The People vs. Vedder Peters. Manslaughter.

JOHN L. HILL,
District Attorney.

13

A true bill.

ROBERT SCHERMERHORN,
Foreman.

Filed January 13, 1866.

JAMES G. CAW,
Clerk.

At a Court of Sessions, held at the City Hall, in the City of Schenectady, in and for said County, on the 14th, 15th, 16th, 17th and 18th days of January, A. D., 1868.

Present—HON. JUDSON S. LANDON,
County Judge.

14

HENRY M. AIKEN, and
ABRAM W. TOLL,
Justices for Sessions.

THE PEOPLE,	}	JOHN L. HILL, <i>Dist. Att'y.</i>
vs.		
VEDDER PETERS.		

The defendant having been indicted for manslaughter in the fourth degree, and being arraigned, and the indictment being read by the clerk, and he being ordered to plead thereto, did plead "not guilty."

On motion of John L. Hill, District Attorney, ordered, that a jury be empaneled to try this cause; whereupon the following jurors were called and sworn, viz:

Jury—Cornelius Reynolds, Walter Bradshaw, Julius C. Groot, Charles Cramer, John Sraff, John T. Gregg, Wm. Van Vranken, John Ennis, John Butler, Abram Bronk, John C. Van Wormer, Lewis W. Hunt.

People's Witnesses: Andrew Van Vorst, Edward Barker, Sarah Campbell, Dennis Kendrick, Dr. Ellwood, Dr. A. M. Vedder, Dr. A. March, John F. Clute.

Defendant's Witnesses: Charles H. Van Vranken, Mary Howe, D. M. Moore, Dr. Jas. L. Van Ingen.

THE PEOPLE,	}
<i>agt.</i>	
VEDDER PETERS	

The testimony closed, T. B. Mitchell summed up for the defendant, and John L. Hill, District Attorney, summed up cause in behalf of the people; whereupon the court delivered its charge to the jury, after which they retired in charge of officer Ryley, duly sworn, to deliberate on their verdict. 17

The jury returned into court and being called, say they find the defendant, Vedder Peters, guilty, and recommend the prisoner to the mercy of the court.

The testimony in this cause, both on the part of the people and on the part of said defendant, having been submitted to a jury duly empannelled to try said cause, at the January Term of said Court, in the year 1868, and the said jury having returned a verdict of guilty, and it having been represented to me, on the part of the defendant, that the said defendant is desirous of taking the said cause on exceptions under the Statute, to the Supreme Court, it is ordered that judgment in said cause be suspended till the next session of this Court, upon the defendant giving his recognizance with sureties approved by the Court, in the sum of \$1,000 to appear at the next Term or any subsequent Term of this Court, and obey and receive whatever may be commanded by this or the Supreme Court. 18

After which the defendant appeared, and in open court, gave and entered into a recognizance in pursuance of said order. 19

COURT OF SESSIONS—SCHENECTADY COUNTY.

THE PEOPLE,
 vs.
 VEDDER PETERS.

20

Case and Exceptions.

Be it remembered that the above named defendant, Vedder Peters, having been indicted by the Grand Jury in and for the County of Schenectady, for the crime of manslaughter in the fourth degree, and the said cause, upon the indictment aforesaid, coming on for trial before the court and a jury duly empaneled, at this present January Term of said Court of Sessions of Schenectady County, holden at the Court House for said county, in the City of Schenectady, on the 16th day of January, in the year 1868, the following evidence on the part of the people
 21 and the said defendant, was submitted to said jury, and the said Exceptions to the rulings of said Court were duly taken by the said defendant as is set forth in said Bill of Exceptions.

ANDREW VAN VOAST, sworn for the People:

I reside in Schenectady; have resided here over two years; lived at Mrs. Clark's in Centre-street; I know the defendant; I knew Edward Gleason after I understood who he was; he was pointed out to me; I recollect being at Number 4's Engine house, in this city, a year ago last October, when
 22 that difficulty occurred there between Gleason and Peters.

Q. Were you present at the Engine House?

A. I was there when Gleason came in.

Q. Go on and tell the jury and the court, in your own way, just what occurred there?

A. I was in the engine house at the time Gleason came in; he came in and asked Mr. Bearup for a chew of tobacco.

Q. What Bearup?

A. The hostler Bearup; he turned around and asked me for a chew; I told him I didn't use it; he said that's all right; he sat down on the bench where Bearup was at work; he got up and went by the engine and was talking to Peters, and I went out. 23

Q. Did you stay around there?

A. No, I was in the house.

Q. What else did you see?

A. I was in the house a few minutes and came out and Gleason laid on the side-walk.

Q. What did you see about him?

A. He was getting up. 24

Q. What was his condition?

A. He was bleeding about the face.

Q. Where was he bleeding?

A. I couldn't tell, there was blood all over his face.

Q. Which way did he lie?

A. He was on his hands and knees.

Q. Whereabouts on the side-walk?

A. About the middle. 25

Q. Where were you?

A. I was going out of the gate.

Q. You were in whose house?

A. Mrs. Campbell's.

Q. That is on the right hand side and next to it?

A. Yes.

Q. How many feet were you off from Gleason when you saw him lying there?
26

A. I could not tell.

Q. Estimate it !

A. About 6 or 7 feet.

Q. Did you point out whereabouts that was to Mr. Henry?

A. No.

Q. Did you or Mrs. Campbell do anything reference to
27 him.

A. No.

Q. Did'nt you get a pail of water?

A. Yes we got a pail of water ; she was going to have him wash himself.

Q. Blood upon the sidewalk?

A. Yes.

Q. Much or little?
28

A. Considerable.

Q. Where did Gleason appear to be bleeding from?

A. He was bleeding out of the nose and the blood ran down here, (cheek).

Q. On the right hand side?

A. Yes.

Q. Which way was the head lying, towards the curb-stone?

A. No, he was right on the sidewalk with his head towards Union street.

Q. Then his feet were towards you when you came out? 29

A. Yes.

BY THE COURT:

Q. Where was he bleeding?

A. The blood ran down his nose and down the side of his face.

BY DIST. ATTORNEY:

Q. How far up? 30

A. Up here, (cheek bone).

Q. Blood upon his clothes at all?

A. Did'nt see any.

Q. When you went out there with a pail of water, what was he doing?

A. He was getting up, or got up and walked away.

Q. How did he walk? 31

A. He walked straight.

Q. Did he get up quick?

A. No he staggered once or twice.

Q. When he started off, did he stagger any then?

A. No.

Q. How did Gleason appear when you found him in that condition?

A. He looked kind of wild out of his eyes.

Q. Did he take any notice of the water that you brought
32 to him?

A. No.

Q. Did he say anything to you?

A. No.

Q. Did you speak to him, or Mrs Campbell either?

A. No.

CROSS-EXAMINED: I understood you to say you were in the engine house when Gleason came in. Did you hear
33 any conversation between him and Peters?

A. No.

Q. Didn't hear anything that passed between them?

A. No.

Q. Did you hear Peters say anything?

A. I heard him talking, but didn't hear what he was talking about; I went right out.

Q. How many feet was it from that door to where you
34 were?

A. I should judge 6 or 7 feet.

Q. And there you saw Gleason get up?

A. Yes.

Q. And that is all you saw about it?

A. That is all.

RE-DIRECT:

Q. Do you know where this man Bearup is?

A. I do not.

RE-CROSS:

35

Q. Was Peters in charge of that engine house?

Objected to as calling for a conclusion.

BY THE COURT:

What do you know about his being in charge of the engine house?

A. He was taking charge of the engine I suppose.

BY COUNSEL:

36

Q. Was he doing anything with the engine?

A. Not at that time.

Q. Was he doing anything in the building?

A. He was at work I believe.

Q. At what?

A. At Jewelry I believe.

Q. Do you know who kept the key of the Engine House?

A. Peters had the key of the Engine House.

Q. How long had Peters been at work in the Engine House to your knowledge? 37

A. I couldn't tell.

Q. Do you know of his ever being there before that time?

A. Yes.

Q. Know how long he had been there?

A. Six or eight months.

Q. Was you sworn before the coroner's jury?

33 A. I don't recollect whether I was or not.

Q. I was going to ask you if you didn't recollect testifying there, that you did hear Peters order him out and he refused to go?

A. No he didn't order him out.

Q. Did he tell him to go, he couldn't stay there?

A. Didn't hear Peters say so.

39 Q. Did you hear Gleason say he wouldn't go out?

A. No.

RE-DIRECT:

Q. Gleason was orderly while in the engine house, as far as you saw?

A. Yes.

EDWARD BARKER, sworn for the People:

40 My age is 17 last April; I know the defendant; I did not know Edward Gleason.

Q. Did you ever know him?

A. Yes. I knew who he was, but I was not acquainted with him; was sufficiently acquainted with him to identify him when I saw him; I think I saw him at No. 4's engine house a year ago last October, upon an occasion of a difficulty between Peters and Gleason.

Q. Will you state what you were doing and where you were?

A. Gleason came into No. 4's Engine House, I think between ten and eleven o'clock and asked Oscar Bearup for a chew of tobacco, and he said he didn't have any, and he asked the last witness for a chew and he said he did not have any, and Gleason said it was all right.

Q. What did Gleason do when he came in the engine house? 41

A. I don't remember, only asked for a chew of tobacco.

Q. Where were you then?

A. In No. 4's engine house.

Q. What else occurred?

A. Between 11 and 12 Peters told him to go out, he wanted to go to dinner.

Q. What was Gleason doing? 42

A. He was lying on the lounge. I don't remember whether Gleason made any remark then or not. Peters told him to go out again. Peters told him to go out three or four times, and finally Gleason raised up on the lounge; he was lying on the lounge in that position, (resting on his elbow) with his hand in that position (doubled up).

Q. Was he sitting up?

A. Not exactly straight. 43

Q. Was he leaning over?

A. Yes.

Q. So that his elbow touched the lounge?

A. Don't know.

Q. Have you stated all you heard said?

A. Yes, all I can remember; and then Peters pulled off

his coat; Gleason said I will not go out and you can't put me out; I went out, and in a few minutes I saw Peters bring Gleason out by the collar, and laid him down on the sidewalk.

44 Q. What then?

A. He went in and got his coat and shut the door and went off to dinner.

Q. Did you see Peters kick or strike him?

A. No. I didn't see him lay his hands on him after he got on the side-walk.

Q. All you saw, Gleason made the expression you said, and Peters pulled off his coat?

45 A. Yes.

Q. And the next thing you saw was Peters dragging Gleason out of the engine house by the collar?

A. Yes.

Q. Do you recollect noticing whether Gleason was bleeding when he came out of the engine house?

A. No.

Q. Was he bleeding when he was on the side-walk?

46 A. Yes.

Q. How long was it after Peters dragged him out that he shut the door?

A. Just as quick as he could.

Q. What time of day was that, between 11 and 12?

A. Pretty near noon, I don't recollect

Q. You saw Van Voast in there?

A. Yes.

Q. And Peters and Bearup?

A. Yes.

47

Q. Did you see Mrs. Campbell?

A. I saw her up in the window.

Q. How did Gleason lie upon the sidewalk?

A. Don't recollect.

Q. Recollect which way his head was?

A. From the door I think.

Q. Recollect how far he was from the door?

48

A. No.

CROSS EXAMINED:

Q. Who had charge of the engine house?

A. Peters.

Q. How long had he charge of the engine house?

A. I should judge 6 or 8 months.

Q. Is that the place where the new steam engine is kept?

A. Yes.

Q. The place where the hose is kept?

49

A. Yes, the hose that belongs to the engine.

Q. It is something of a machine shop; they have got a good many tools for fixing and repairing and keeping it in order?

A. Yes.

Q. You say you heard Peters tell Gleason that he must go out?

50 A. Yes.

Q. How many times did you hear him tell him that he must go out?

A. I should judge 3 or 4 times.

Q. About how long were they apart from the first time he told him until the last?

A. I don't recollect.

Q. Had Gleason sufficient time to go out of the shop from the time Peters first told him until the last?
51

A. I don't recollect.

Q. Tell how much time elapsed from the time he first told him to go out until the last time.

A. I could not tell.

Q. You say that Gleason told Peters he would not go out and he could not put him out?

A. Yes.

52 Q. Give us his language.

A. He said he would not go out and By God he could not put him out; some such a way as that, I don't exactly know the words.

Q. Did he raise up at this time in the manner in which you said and double up his fist?

A. Yes.

Q. Then you left him?

A. Then I stepped out of the door.

Q. It was after he told him he would not go out and he could not put him out, that he threw his coat off.

A. Yes.

53

RE-DIRECT:

Q. Do you know whether Gleason had been in the engine house before or was in the habit of coming there?

Objection raised but overruled.

A. I had seen him there once before.

BY THE COURT:

Had you ever seen him there more than once before this occasion?

A. No.

54

RE-CROSS:

What did he do on the former occasion?

Objection raised but withdrawn.

A. He was drunk there once before and Peters wanted to go to dinner and he left me there until he came back. Gleason was lying on the hose cart. I was lying on the lounge and he got up and came to me and grabbed me and threw me against the hose—

55

RE-DIRECT:

Do you know whether Gleason had been a member of the engine company?

A. I only know from hear-say.

Q. Do you know whether or not people from the city are in the habit of stopping at the engine house?

(Objection)

THE COURT:

You may show whether this man Gleason was in the habit of making it a rendezvous.

56 A. Peters was the keeper, and when a man was, by him ordered to leave, unless he was his superior, he was obliged to leave.

CROSS EXAMINED:

Peters left me there alone with Gleason and told me not to let any one lie down. A few minutes after Peters was gone Gleason came up to me and wanted to lie down and I told him no, and he took me by the heels and chucked my head against the hose cart, that raised a bunch on my head. I communicated these facts to Peters. That was before this transaction. I do not recollect how long; two
57 or three months I should think; might have been longer. It was while Peters had charge of the engine house. I do not now recollect Peters taking hold of him by the coat and saying 'go out' or 'you must not sleep here,' or anything of that kind. He asked him to go out several times: Gleason raised up in some position like this (witness inclining in the position,) with his fists prepared to fight, and at the same time made some reply saying, 'By G—d you can't put me out.'

RE-DIRECT:

I think that Gleason's head was toward the rear of the engine house. I think he was not lying out at full
58 length on the lounge. I think not when he first laid down. His legs were hanging off. His head rested upon his hand at first. He raised up a little higher when he said 'by G—d you can't put me out.' I do not recollect his elbow lying upon the lounge. I can recollect that his fists were doubled. I can recollect the position I think he occupied. I don't think his elbow or his hand was on the lounge when that thing was done. He was not sitting exactly up straight. Over like that (inclining to the right,

and a little forward). I could not say that he leaned to the right. I should think he was leaning as much as I am. I should think he was sitting up nearly straight.

The following, by stipulation, was read from the minutes of the testimony taken by and before the Coroner and his jury, as being the testimony of Oscar Bearup: 59

OSCAR BEARUP being first duly sworn, testifies and gives evidence as follows :

Edward Gleason came into a steam fire engine house, and stayed there about an hour and a half. He asked Mr. Peters where the engine leaked, and Mr. Peters showed him (Gleason) where the engine leaked, and then Gleason laid down in the engine house on a lounge. Mr. Peters then said, "don't go to sleep there." Gleason made no reply; then after a few minutes Peters again asked Gleason not to go to sleep there. A short 60 time afterwards Peters wished to go to dinner, and took hold of Gleason by the arm and shook him gently. I can't say whether Gleason was then asleep, but Peters shook him a little harder, by the arm, and said, "Come Ed, I want to go." Then Gleason said, "You can lock up and let me stay here." Then Peters said, "I am not allowed to have any one to sleep here," and said, "Ed., don't you want some dinner." Then Gleason made some reply, but I don't know what it was. Peters asked him several times to go, to which Gleason made no reply. Peters then said, "You must go, Ed." Gleason then said, "By God, I won't go and you can't put me out." Peters then kicked 61 Gleason three times in succession, immediately, then Peters took Gleason by the collar and dragged him out of the engine house on the sidewalk. The first kick seemed to be on the mouth, the second and third on the left cheek. Peters then walked away. Gleason then laid a few minutes and then walked away. When Gleason was first kicked he was sitting on the lounge with one fist doubled. It appeared as an effort of resistance. When kicked the

other two times he was lying with his side on the lounge. I was there when Gleason entered the engine house. I did not notice that he was intoxicated, he did not stagger. He asked me for a chew of tobacco, and I, not having any, Gleason asked another man, (Van Vorst), for a chew, who 62 replying that he did not use it, Gleason said, "It was all right." Edward Barker was present in the engine house until Peters began the kicking, he was then outside of the door. He saw Peters drag Gleason on the sidewalk. No one else was by to my knowledge. I think this occurrence took place on Thursday, two weeks to morrow. I think Thursday, the 12th of October. It was about twelve o'clock at noon. I shortly afterward went to dinner. I can't say how long Gleason laid on the sidewalk, but I think not over three minutes. These occurrences took place at the steam fire engine house in College street, known as 63 Engine House No. 4. I made no particular examination as to how Gleason was injured at the time. I did not believe at the time that Gleason was seriously injured. I reside in this city, in College street No. 77. I am about 27 years old. My health is infirm and I have no particular occupation at present. I have been acquainted with Gleason for some time but not very intimately. I do not know the fact that Gleason was a quarrelsome man, but that was his reputation. I do not know what brought Gleason to the engine house on that day. I know of no business he had there. Peters appeared to be angry. I can't say he kicked Gleason very severely, but severely 64 enough to get him out. I never knew of any ill-feeling between Peters and Gleason. I have been informed that Gleason was foreman of an engine at that house some years ago. It is not the same engine that is in the house at present. I have been well acquainted with Peters since he has been connected with the engine house. I do not consider him an easily excited man, but when he does get excited on provocation he becomes considerably so. After the occurrence I saw some blood coming, I think, from Gleason's mouth, near the door of the engine house. I

also saw some blood on the pavement. I think it came from his mouth. Peters was sober at the time of the occurrence. Saw all that occurred. I did not see Peters kick Gleason except on the mouth and cheek. He did not kick him any where else.

OSCAR H. BEARUP. 65

ANDREW VAN VOAST called for the prosecution:

I was not there when Gleason said "By G—d you can't put me out.

MRS. CAMPBELL sworn for the prosecution:

I recollect the occasion spoken of by the other witnesses. I was up stairs in my room and I stepped to the window, and I noticed Barker and Bearup on the sidewalk, and I saw Peters come out carrying a man who was drunk, as I supposed. He appeared to have him by the coat collar, and took and laid him on the sidewalk, and I asked Barker who that was, and said he didn't know. Barker appeared to be a little afraid, and I saw Peters shut the door after him and walk off. He raised up, and when he did so, the blood dropped off his face. I saw Andrew stood on the stairs, and said that there was somebody and his nose bleeding, and told him to take him a pail of water, and he took out the water, and when he got there he kind of ran away. He looked as if he might have the delerium tremens, and Andrew was afraid of him and sat down the pail, and Gleason got up and walked towards the railroad bridge. He walked ordinarily, not fast nor slow. He was bleeding so that it ran from the side of his face and it kind of dropped off. He laid there while I was going down stairs and down to the gait. He raised up when I got the pail of water. He got up staggering like a man intoxicated. His hat was off and he was kind of looking around a little, looking for his hat. I could not say how much blood there was on the sidewalk. I said before it might have been a quart. I tid a little water, threw it on and it looked pretty big. I think he kind of

rubbed his face there. Before I thought there was a quart. It looked so, it was quite a big spot. He bled freely out of his nose. I don't know how long it was after I saw him dragged out until I got down stairs with the pail of water. I went down pretty fast. I think it 68 must have been ten minutes, but I can't say. May be five or ten minutes. I did not pump the water, it was there in the house. When he got to Union Street, he turned toward the railroad bridge. He went on the Union School side. He crossed twice. Crossed Union Street and College. He was on the Engine House side of Union Street.

CROSS EXAMINED :

I went immediately when I saw hm come out. After he raised his head. I did not stand and look there. As quick as I saw him I ran down. There were no doors to impede 69 me. I forget how many feet it was from where I was to where he was. Less than a hundred feet. I was there just as as quick as I could. I don't hardly know if it would be over a minute.

DENNIS KENDRICK, sworn for the prosecution :

I am a laborer and watchman at the Saratoga Railroad engine house. It is a good way from the Union street bridge. It is down along the railroad. I knew where Ed. Gleason stayed before he died. My place of business is between Union street bridge and where he lived at that time. 70 I recollect about the time of the difficulty between Peters and Gleason at the engine house. I saw Gleason going home. I saw him first about the middle of the Union street bridge, just as he was crossing the bridge. That is not far from the corner of College street. About as far as from here to the corner of Ferry street, that is the outside of it. When I saw him first he was about in the middle of the bridge. He was going across the bridge as if going home. I looked at him and watched to see where he went, which

was down the railroad, and I saw him turn down towards his house. It was not a block from the railroad to his house. A very small block. I saw him at the point they usually turn to go to his house. I asked him what was the matter with him and I told him to take the handkerchief from his nose and he did and the blood ran out. I told him to 71 keep the handkerchief to his nose, and he did so. I could not see that anything was missing, but the blood came out of one side of his nose, as I thought, freely. His face was not bloody.

The prosecution read in evidence, the deposition of Dr. Tinker, as follows:

SCHENECTADY COUNTY COURT OF OYER AND TERMINER.

THE PEOPLE,
vs.
VEDDER PETERS.

}

72

MARTIN A. TINKER, sworn:

I reside in Brooklyn, Kings county, N. Y. I am a physician by profession, and have practiced as such sixteen years. Have practiced in this city, and had for two years, ending in January, 1867. That was my only business. I do not know Vedder Peters, the defendant. I have seen him. I knew Edward Gleason, that is, I saw him; knew him from the 17th of October, 1865, to the 19th of the same month. I was requested to attend him professionally. I visited him. I found him in a chamber at No. 6 Pine street, in this city. I found him lying in bed on his back. He was unable to speak: could not articulate any word distinctly, apparently suffering from some cerebral difficulty. Both of his eyes were very deeply shaded, black and blue. They were not bruised, although ecchymosed, and he complained, by putting his hand to the left side of his face, in front and beneath the left ear, and brought his hand down in front of his ear to beneath the jaw, as if to indicate to me that he was sore in that region. It was somewhat swollen there. His natural complexion 73

was very white. His beard was very black, and I could not tell whether there was any black and blue discoloration on that part of his face as far as his beard extended. That was where he passed his hand. I could not detect any appearance of external injury upon the side of his face.

- 74 Across the upper part of his chest, in the region of his collar bone, there was the appearance of a slight superficial scratch, similar to the scratch of a pin. I examined his body, sides, back and extremities, externally. I could find no other marks of injuries whatever on his person. The evacuations of his bowels and bladder were made by him involuntarily in his bed. I saw some evidence of this the second day I visited him. He was frequently muttering. I could not understand anything he said. His breathing was most of the time tolerably regular, accompanied occasionally by a sighing respiration. His pulse
- 75 was moderate and tolerably regular. The ecchymosis of the eyes covered the whole cavity of each eye, entirely around the eye, not affecting the ball. He could partially protrude his tongue. It trembled as he did so. I could detect no fracture of his skull, nor even tenderness of skull. I did not prescribe for him, as I did not think I could do him any good. I thought he had one of two things, which, being an entire stranger, I could not decide at the time, either delirium tremens or compression of the brain. When I saw him the second time, I concluded he was laboring under both difficulties. That the delirium tremens
- 76 was excited by the compression of the brain, which is not unfrequently the case. I considered him in a very critical situation on my first visit. I called twice on the first day. Once alone, and the second time with Dr. Vedder. We unitedly gave the body an examination, and discovered nothing different from what I have stated. The second day I found him in a similar condition, except weaker. He was gradually growing more unconscious. I saw nothing new in his symptoms, except they were more unfavorable. No difference in the appearance of his face. I saw him the next day, he was growing weaker. He had

two convulsions, caused undoubtedly by the compression of the brain. This was the third day I visited him, and the last time I saw him alive, and the patient subsequently died, and a post mortem was had. It was made under the direction of Dr. Vedder. Dr. Ellwood, Dr. Hoag and myself were present. On a careful examination of the body, 77 no indication of external injury could be found, either on head or body. On removing his scalp, a large place where the blood had settled on his left temple, about two and a half inches, by three to four inches in size, was discovered. This extended from a point on the temple, about opposite the top of the ear, down along in front of his ear. We did not examine lower, and did not otherwise dissect the face. That was the only external injury found. It was simply settling of blood between the scalp and bone. This injury had evidently arisen from some external injury, as a blow or bruise. We could detect no indentation of skull or mark upon the skin. A blood vessel evidently had 78 burst. On removing the whole skull, which was done by sawing directly over the eyebrows, and above the ears, and thus around, a large clot of blood was found occupying the left front portion of the brain, extending from just above the eye, exterior angle of the left, toward the top of the head laterally. The lower portion corresponded with the upper portion of the external settling of blood. This clot was about two and a half by three inches in size, and in the thickest part of it five-eighths to three-fourths of an inch in thickness, and was very firm and crepitated between the fingers. This would cling together. It was 79 taken out. This clot was beneath duramater or outer membrane of the brain. This produced direct compression of the brain. No injury to the skull could be discovered. Its most fragile parts were not injured. This clot of blood was caused by a very slow effusion of blood from a ruptured blood vessel. The blood was probably gradually oozing out of a very small blood vessel. We detected no such rupture, and could not possibly have done it. This blood probably had all settled there previ-

ous to his death. It was surprising that the effusion of blood was so slow. His death was caused by compression of the brain. Such rupture of blood vessels under the skull very frequently occur. I never saw any such case occurring naturally in my experience. I have no opinion
 80 as to the cause of the rupture. The blood vessels themselves in persons of intemperate habits are more subject to rupture than in persons of temperate habits. Such ruptures may occur by a blow direct upon the skull or even by a sudden jar, as in the case of a fall or by falling and striking the head against some hard substance or by inadvertently stepping down a step. In the case of a blow, the skull is more likely to be indented, than in case of a fall. This rupture might have been caused by a blow or a fall, and no indentation of the skull. There was no disease found in any of the cavities of the body that would produce death, except this compression of the brain. This
 81 will account for all symptoms discovered.

On his CROSS EXAMINATION, the witness said:

On the post mortem examination, we examined all parts of his body. His previous habits had without doubt been intemperate. He had the drunkard's liver, and all appearances indicated an intemperate man. There is medical authority for stating that such a rupture might occur from natural causes. The external indications show that there was violence, and the internal evidences shows violence. I assume violence, from finding this settled blood
 82 which I have discovered. While the books admit the possibility of a similar rupture from natural causes, still in my opinion this was not so caused. I do not think any blow inflicted upon the lower jaw could produce such a rupture. I think a violent blow or kick from a man, violent enough to burst a blood vessel upon the surface of the brain, would be likely to burst a large blood vessel, and therefore be more rapidly fatal. Two blood vessels must have been ruptured, one externally and the other internally. When

a man is an habitual drunkard, the tendency of his blood vessels to rupture is greatly increased. The settling of the blood around the eyes affords me proof of injury to his eyes by the violence.

RE-DIRECT:

83

One concussion might have produced the two ruptures, and I suppose the two ruptures were so produced.

RE-CROSS:

The inner rupture may have occurred after the injury was received. There are no circumstances to indicate when the inner rupture occurred. That is the finding of this clot of blood, does not indicate with any certainty the time when the cause which produced it first happened. I can't refer you to any authority that states that a person having the delirium tremens might rupture a blood vessel, 84 but I think such authority exists.

Q. Were you informed when you visited him that he had been on a drunken spree?

Objected to as incompetent, immaterial and improper by District Attorney.

Objection overruled for the present.

A. I was. I think his wife or sister told me so.

Q. Were you also informed that he had convulsions?

Objected to as above by District Attorney.

85

Overruled as above.

A. I was.

Q. Would such convulsions have a tendency to rupture a blood vessel?

A. I do not think they were severe enough. The con-

vulsions I saw on the third day of my visit were not so severe. His convulsions were a tremulous shaking, with some convulsive twitchings, but not violent. I was informed such were the character of his previous convulsions.

RE-DIRECT:

86

The fact that the clot of blood inside was found higher up than the external examination, affords no evidence that the injury was inflicted as high up as the clot of blood extended. The lower portion of the internal clot of blood was directly opposite the upper portion of the extravasation. In saying that I have no opinion as to the cause of the injury, I mean that it must have occurred from one of the causes I have mentioned, but from which I have no opinion.

Q. Assuming that the deceased had received any injury
87 upon the head, where the external extravasation was, have you any doubt that the external and internal injury were from that cause?

Defendant objects as leading and because witness cannot give an opinion upon an assumption.

Objection overruled.

A. No sir.

Q. Explain how long the inner rupture of blood vessel,
88 that produced the clot, may have occurred. after the injury or shock was received?

A. In forty-eight hours in my opinion.

Q. Explain how that may be. When reaction takes place after the shock, the blood vessels being relaxed and debilitated, the influx of the blood in this way gorging the brain, and the infusion through the relaxed walls of the vessels or a rupture may take place. In such case would not the extravasation still be the direct result of the injury or shock?

A. There are cases in which it may *possibly* not be. There are cases in which I have no doubt it will occur. When I say there are no circumstances to indicate when the rupture occurred, I mean from the physical examination alone. I do not think the convulsions I saw would rupture a blood vessel.

89

RE-DIRECT:

Q. Would delerium tremens produce an expansion of the brain?

A. It is held by some medical authorities that it would, and by some that it would not. I have no actual knowledge of the matter.

Q. If the brain expands, might it not thereby rupture a blood vessel?

District Attorney objects as incompetent and hypothetical.

Objection overruled.

A. Not without some shock or concussion, as stepping down a step unthinkingly or a fall or blow might produce such a shock.

M. A. TINKER.

Subscribed and sworn to before me, on the 9th and 10th days of April, 1867.

J. S. LANDON, COUNTY JUDGE. 91

Defendant's counsel objected to the answer explaining how the extravasation of blood was produced on the ground, that it was not competent for a physician, not being present, to say what produced the effect in a particular instance; he could only give his opinion generally as to what cause would produce such effects.

The Court, *inter alia*, observed: As a scientific man he has the right to say, I think, that this injury has arisen

from an external injury. He don't say it arose from a bruise, he says that it arose from an injury as a blow or bruise, it is simply the expression of an opinion. I shall admit the evidence.

92 Defendant by his counsel, then and there duly excepted.

Defendant also objected to another answer given by deponent when referring to the blood, which objection was overruled and defendant duly excepted.

Defendant further objected to the opinion given on the cross-examination, as to the rupture not being caused by natural causes. The objection was overruled and defendant duly excepted.

93 Defendant also objected to the opinion given as to the rupture produced by the injury, assuming that he got one, there being no proof that the deceased received an injury where this one appeared.

THE COURT:

That is based on a hypothetical case. If there is no evidence to sustain the hypothesis then the evidence is inadmissible. I will receive the testimony and look at the testimony of Bearup.

DR. ELLWOOD, sworn for the prosecution:

94 I reside in the city; my business is that of a physician; have been a physician eighteen years; have been in the city I think about sixteen years; I did not know Edward Gleason in his life time; I saw him twice before his death; my impression is I saw him first on the 18th of October and then I think again on the 24th, the day he died; I made a memorandum of his symptoms upon the days I called; upon the 18th I found him bruised about the face, ecchymosed eyes and breast; his nose swollen as well as his neck and face, and he was laboring under symptoms of partial insensibility; his surface was full and cold, his fea-

tures were ghastly, his pulse feeble, breathing slow. I called again on the 24th; I examined him again, when I found his pulse slow and full, his skin was hot, partial paralysis of limbs, pupils dilated, his eyes injected. I was present on the occasion of the post mortem examination; Dr. Vedder took the examination; Dr. Tinker was present; 95 Dr. Hoag and myself were present; he was Dr. Tinker's patient; I simply called by request of his sister; I came to give my opinion what I thought of him. By request of Dr. Vedder I took paper and took down the minutes as they were given to me by the Dr. and as I could see myself; the memorandum I made there then; the only way I can state is to read it.

Defendant objected to the memorandum being read, as incompetent.

BY THE COURT:

96

Does it refresh your recollection?

A. It refreshes my recollection by looking at it, but not so that I can state it minutely as it occurred.

The Court ruled the evidence competent.

THE WITNESS CONTINUES:

The first thing upon examining the body we found extreme rigidity of the body, also found small ecchymosed spots about the anterior portion of the face and neck, also found the anterior or rather lateral part of the face and neck of rather a greenish or yellowish color; upon the left side and the posterior portion of the body of a dark color 97 that might be produced after death; we found also a rather bluish or yellowish color under each eye; then the skull was examined afterwards and from the external examination there was no depression found; on removing the skull large ecchymose spots were found anterior by the orbit and posterior by the ear (anterior by the orbit would be here by the eye); on removing the *calcorium* the *dura mater*

was more adherent on the right side than on the left; it seemed to be shrunk away on the anterior left portion of the brain; the entire left half of the *dura mater* presented a dark bluish appearance; on cutting through the *dura mater* on the left side a quantity of dark strumous blood 98 flowed out; on removing the *dura mater* on the left side a larger quantity of coagulated blood was found occupying the entire half of the temporal region, about three inches in diameter, and five-eighths of an inch in thickness at the centre; the right side of the brain, the convex surface, slightly injected; the coagulum on the left adhering to the *dura mater*; the coagulum very firm and found to extend down to the tentorium of the left side; *dura mater* occupying the base of the brain; the left side presented the same discolored appearance as on the right side; the arachnoid membrane was highly injected, except on the part cor- 99 responding with the coagulum, where it was more intense; the cerebrum or cerebellum a section, was found healthy; upon making a careful examination of the skull, no fracture could be found; the part extending upon the chest, was an inch thick, and also on the abdomen; the whole surface of the liver presented the appearance of a gin liver, what is commonly called a drunkard's liver; upon cutting the same with a scalpel, it appeared to be crispy, hard; the lungs were found healthy; the membrane covering the lungs adhered on the left side from an old pleurisy; the heart and its valves were healthy; the intestines seemed to be healthy; the spleen was nine inches in length, 100 one and a half inches thick; the exterior had a normal appearance; weight one and a half pounds; the bowels were healthy; the kidneys and bladder were healthy; the mucous coat of the stomach had several congested spots. I swear I made this memorandum at the time, and it was correct when I made it. In my reading I said that the cerebrum *or* cerebellum were healthy. I meant *and*.

BY DEFENDANTS' COUNSEL:

Q. Refer to that part.

The Witness reads again:

On cutting through the membrane on the left side, a quantity of dark strumous blood flowed out; on removing the membrane a coagulum was found; the right side of the cerebrum; the convex surface was slightly injected.

101

BY DIST. ATTORNEY:

In relation to this appearance of the temple which you described; In your opinion, would that happen naturally after death or must it have been produced by some blow?

Defendant's Attorney and Counsel objected, as before that, the witness could not testify as to the individual case; he could only say generally what causes would produce such effects.

Objection overruled, and defendant, by his counsel, then and there duly excepted.

102

A. The ecchymosed spots upon the temple would undoubtedly be caused by severe external violence and after death.

CROSS EXAMINED:

I saw him on the 18th for the first time. He was then lying on his right side. I don't recollect of seeing him lie on his left side. The next time he was on his back, and the first time on his right side. I always supposed the cheek existed below the eye; below the bone (cheek-bone). the temple is between the corner of the eye and the ear, and above a line drawn there. The temple bone is above.

103

RE-DIRECT;

The upper portion of the cheek is the lower portion of the temple, and of course they unite.

RE-CROSS:

They are not part of each other, but they join.

DR. A. M. VEDDER, sworn for the prosecution:

I reside in Schenectady. My profession is physician and surgeon. Have been engaged in the business since 1837, in actual practice. Have been in this place since 1840. Knew Edward Gleason in his life-time. Remember hearing of the difficulty that occurred between Peters and Gleason at the Engine House. I called to see Gleason about that time. I called on the 18th of October, in company with Dr. Tinker and Dr. Ellwood. I found him lying in bed, quite immovable and unable to articulate. He was pale. The body cold. He had a rather slow pulse and rather feeble. I found some ecchymosed spots, (black and blue spots) under, I think, both eyes, and also some marks upon his chest; high up on it and about the neck on the left side. Those symptoms indicated cerebral or brain disease. It would be compression of the brain. I had no doubt about what difficulty the symptoms indicated.

BY DEFENDANT'S COUNSEL:

And no doubt as to whether it was compression of the brain.

BY DISTRICT ATTORNEY:

I don't remember whether I observed anything on the side of the face or not. I prescribed nothing for him in any way. I merely called with Drs. Tinker and Ellwood. I did not visit him again until the *post mortem* examination. I may have seen him twice, I am not certain. The examination was made eighteen hours after death, either on the 24th or 25th, I am not certain which. There were marks of bruises about the fore part and lateral part of the neck, (witness speaking from memory) which presented a greenish or yellowish appearance. The back part of his body was of dark color, a livid color. There was ecchymosis under each eye. Ecchymosis is a *bruise*. That is about as near as I can get at it.

BY DEFENDANT'S COUNSEL:

Ecchymosis might come without a bruise. It was a settling of blood. It is an effusion of blood there.

BY THE COURT:

When I say ecchymosis of the eye, I mean blood settled under the eye. There was no fracture or injury of the skull or spinal column. We then removed the scalp, down to the bone, and the upper part of the skull; and we found one of these ecchymosed spots on the left temple, two or three inches in diameter, outside of the bone. 107

BY DEFENDANT'S COUNSEL:

I mean outside of the skull, but underneath the skin. And this had blood settled in and a little water. It was too moist. This blood was mixed in through the temporal muscle. We then took a saw and sawed around the head, by the eyes, and removed the upper part of the skull. The membrane, lining the skull, was a little more adherent on the right side than on the left. The *dura mater* presented a dark blue appearance on the left side, and on cutting through it, a quantity of dark blood and water flowed out, and on removing the *dura mater* on the left side, a large coagulum or clot of blood, occupied the entire left temporal region, about three inches in diameter and five-eighths of an inch in thickness at the centre. The upper right side of the cerebrum, on the convex surface, was slightly injected. The coagulum was firm and was found to extend backward as far as the tentorium on the left side. The *dura mater*, occupying the base of the brain on the left side, presented the same discolored appearance as the convex side. The arachnoid membrane of the left hemisphere was highly injected except at its commissure. That is where the two hemispheres join together. At a point corresponding with the coagulum the injection was more intense. The whole substance of the brain was found normal and natural. The fat on the body was one-third of an inch in thickness on his chest, and an inch on his 108 109

110 abdomen. The exterior surface of the liver was uneven. It was harder than natural. The lungs were healthy. The lung of the left side was adherent from an old pleurisy. The heart and its valves were healthy. The bowels were healthy. The spleen was a good deal larger than natural. The mucous coat of the stomach was congested in spots. The kidneys and bladder were healthy. This fully explains the symptoms which I saw there.

Q. State your opinion, from the examination of that body, both after death and before, when you visited him, as to what cause this difficulty on the outside and inside of the skull, which you observed, was attributable, and the character of the causes?

Defendant's counsel objected, that it was incompetent for the witness to give his opinion as to what produced the particular effects.

111 THE COURT:

He can state, that in his opinion, this injury was produced by some external violence; and in a general way, I must allow him, and all the rest of them, to testify; and understanding the question to be in that general sense, I will allow the question.

Defendant, by his counsel, then and there duly excepted.

112 A. I think the appearances about the left temple were produced by violence, as a blow or fall. I think that the same blow or fall that produced the external injury, ruptured an internal vessel, and from that vessel this clot of blood was produced.

Q. Did you, from any particular opinion about the character of the cause, from the examination of any tissue over the left temple, as to whether it was violence?

Same objection, ruling and exception.

A. It was violence. I have no doubt about it. There could no such appearances occur spontaneously in a dead body.

Q. What do you say about the fact of the blood accumulating upon the outside of the head, without a fracture of the skull; may it (the violence) produce the rupture of a blood vessel inside? 113

Defendant objected, on the ground that there was no evidence that the deceased received any blow upon the head.

Objection overruled, and defendant by his counsel, then and there duly excepted.

A. I have no reference in the matter except the books.

Objection raised. 114

THE COURT:

He (witness) comes here as a man of science, and I think a physician gets his knowledge from books as well as from experience. I hold the evidence competent.

To which ruling the defendant by his counsel, then and there duly excepted.

A. The authors in surgery say so.

Defendant's counsel then objected to the answer as well as the question. 115

THE COURT:

I exclude the answer.

THE WITNESS CONTINUES:

That is *my* opinion.

THE COURT:

I admit this answer.

THE WITNESS CONTINUES:

There was both an outside and inside examination made to see whether there was any fracture. I discovered no fracture on the outside.

116

CROSS-EXAMINED:

Q. When you went there on the 18th, Gleason was still alive and you didn't see him again until after the 18th?

A. My recollection is not very clear as to that.

Q. What were his symptoms? How did he breathe? What was his pulse when you saw him when he was alive?

A. They were just as I gave them. I don't remember about his breathing.

117

Q. You have testified with reference to this injury on the temple. In your judgment, could not an injury of the character you have described this to have been, have been produced by any other cause than violence?

A. It could not.

Q. You say this as a medical man?

A. Yes sir.

Q. Do you say that the injury on the surface of the brain (that clot of blood) could not have been produced except by an injury upon the outside of the head?

118

A. I would say it is possible but not probable. I have seen a single case. This would be called maningeal appoplexy; and in this case, I think it would be proper to say, it was maningeal appoplexy produced by violence. I have seen one single case of maningeal appoplexy in a child. It is a form of disease that is almost confined to children. This form of maningeal appoplexy is so seldom from natural causes, that it would be a medical curiosity; and

there is no medical man present, I think, nor do I believe a medical man could be produced, that ever saw a case of maningeal appoplexy in an adult. All appoplexy is not produced by the bursting of a blood vessel upon the brain. It is seldom or never upon the surface of the brain. It is inside the brain. That is one form of appoplexy is inside 119 the substance of the brain. It is not in all cases so, because there are other forms. This is, what we call hemorageneous appoplexy. I think most cases of appoplexy have blood poured out. I did not find this blood vessel, they are hardly ever found. I know it must have been on the surface. My knowledge is based on experience. It could not get there unless it was an external vessel. I am certain that it didn't come from the inside of the brain, because I dissected that. He had a gin liver. Intemperance produced that. There was something the matter with his stomach, but it was of no great consequence. It is common to observe conjection of the mucous membrane. 120 I think the same causes that produced the effect upon the liver might produce that upon the stomach. I observed that there was nothing wrong about the heart. The left lung adhered to the rib. It was not fastened right down. The spleen was enlarged. It may have been so from birth. As to whether intemperance would enlarge the spleen, I have no experience. This clot of blood on the brain was not directly upon the brain; there was a very thin membrane between. In my dissection of the brain I would have found out where the blood upon the surface of the brain came from. There was no dissolution or tenuity of the brain itself. It could not get through this membrane. I have never heard of a case of maningeal appoplexy occurring in an adult. It is not entirely confined to young 121 persons. It will occasionally occur in an adults. It may occur spontaneously, but it is so extremely rare that it would be a medical curiosty. I never knew of a case of it in my practice, except this one in infancy.

Q. Was this a case of manigeal appoplexy, in your judgment.

Objection raised, that the facts must be given, and the question was then for the jury.

Objection overruled and exception duly taken.

122 A. It was, but not produced by natural causes. It frequently occurs that this effect is produced from violence, and yet the skin is not broken. A person may receive violence enough to break a bone and not leave a mark. I have heard the testimony of Dr. Tinker read, and the symptoms which he gave.

Q. Do you agree with Dr. Tinker, in his opinion based upon those symptoms?

Objection raised, but overruled.

A. Yes sir. I have heard the testimony of the witnesses in regard to this injury Gleason received at the engine house.

123 Q. Assuming that he received an injury at the point where Bearup says he received it, would that be sufficient to produce this result?

Objection raised and sustained.

BY THE COURT:

Assuming that he received an injury on the left cheek, would that injury furnish to you evidence of the cause of his death?

124 Objected to, on the ground that he had already testified that the violence received by the deceased, produced death.

THE COURT:

I understand the rule to be, that the witness may be asked a hypothetical question.

Objection then withdrawn.

A. It might, if you locate the injury here on the very top of the cheek.

BY DEFENDANT'S COUNSEL:

That is at the junction of the temple and cheek. It would want to be pretty high up to hit the temple too. Where he locates it, I think it would produce the injury found on the post mortem. If the blood vessel was broken at the very top of the cheek, it might ooze out. It would go in the neighborhood of the spot I found there. It might go down too. 125

BY DISTRICT ATTORNEY:

As Gleason was lying back, in this way, the tendency of the blood would be to run back, would it not?

A. That could not have been then. The blood must have been poured out within a very few hours after the injury, and how he lay then I don't know.

BY DEFENDANT'S COUNSEL:

I could not say from that examination when it was poured out. 126

BY DISTRICT ATTORNEY:

I said the blood (here on the temple) was mixed up with the temporal muscle. That could be so from no natural cause that I know of. I swear to that positively. The blood was mixed in with the muscle. That indicated violence. The cheek extends to the top of the cheek bone. Over to that part of the ear. I have made I think not less than 200 post mortem examinations. An old pleurisy does not tend to shorten life, and we find it in almost all cases where we make post mortem examination. It is rare you find a person's lungs entirely free. 127

Q. About this effusion of blood that produced the clot upon the brain was it slow or rapid in your judgment?

Defendant's counsel raised the same objection as before.

THE COURT:

"I assume that the Doctor can form an opinion from

128 his experience whether the clot of blood was formed rapidly. I assume that he has experience enough for that. I think he can give his opinion as to this clot of blood. I think it comes within his experience to say whether it formed rapidly or slowly," to which ruling defendant by his counsel then and there duly excepted.

A. It did form rapidly. There were no other irregularities or evidence of disease, except this, which in my judgment was sufficient to produce death.

RE-CROSS:

129 I say that in certain cases of apoplexy, it was brought about by the bursting of vessels upon or in the brain. If I had seen this man and found no bruise or blood upon his face, I would have attributed his death to spontaneous apoplexy. If I had not discovered the marks here I would have attributed it to that. It is certain that a bruise upon his head where this bruise was, would have produced all the external appearances that I saw there, without affecting the brain. It was about so, (showing the place,) that I found the blood upon the brain, commencing here, (at the cheek bone,) and going back to the middle. I found the bruise on the temple, and from that I inferred that all the discoloring was from the bruise given upon the temple.

BY THE COURT:

Q. Where do you locate the supposed bruise?

130 A. About there, (above a line from eye to ear.)

BY COUNSEL:

Q. From that spot where you call the bruise, how far is it down to the cheek bone?

A. From the central part of the bruise to the cheek bone I should think it was an inch or inch and a quarter; then it shaded off all around the effusion of blood into the

the muscle. I fix the spot where the central portion of the bruise was; the most marked evidence of the bruises was about an inch and a quarter from the cheek bone: where the blood was most mixed with the muscle. I can not tell where that bruise would be precisely, because the blood would be likely to spread. It would be likely to spread any way, in all directions. Persons subject to delirium tremens are not subject to that kind of disease. I think he might be slightly pre-disposed to it. I don't think they are much more likely to have apoplexy than other persons. Apoplexy is a disease of old age; this man, I understood, was a young man; he had not the apoplectic build, neither had he any disease that predisposed to apoplexy; the only disease he had was disease of the liver, and that was not predisposed to apoplexy. Intemperance tends to bring on other diseases in general ways, but does not specifically tend to this disease. Intemperance does not, in particular tend to enlarge the spleen.

151

133

Q. What is it that produces enlargement of the spleen?

A. Disease of the spleen, fever and ague, produce enlargement of the spleen. The spleen does not operate upon the brain in no way. This disease of the liver will produce vomiting of blood and dropsy of the belly. I don't know of any other disease it will produce. I do not mean to say that it does not produce other diseases than those, but it would not generally produce any other disease. Not specially, but I would not exclude everything. I might name fifty diseases. I could not name one. I think he (Gleason) has consulted me as a physician, in my office. I can't remember what he consulted me about. To my knowledge, I never doctored him in relation to anything, and never made any examination of his system. The symptoms of apoplexy when the patient is about, are stupidity, and they are various. He will have pain in the head, sometimes intense pain; he will have dizziness, a transient deafness, a transient blindness, sometimes have vomiting and then after that he will be inclined to sleep.

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134 The time he will be inclined to that before it will show itself more prominent, will vary. It might show itself in a few hours, or a man might be inclined to sleep for several days. Forgetfulness is another symptom, sometimes hesitancy of speech. I could not say from the examination I made of him that he had not all these symptoms that I said would be symptoms preceding appoplexy.

Q. You have seen those men when they have spasms, when they have delerium tremens; do they throw their heads about much or do they lie still?

A. Then they struggle.

Q. And they disregard wherever their heads may go?

A. That is so; delerium tremens follow what they call a drunk.

RE-DIRECT;

135 Gleason, I think, did not have the delerium tremens.

RE-CROSS:

Q. Do you know?

A. I think he did not. I only say when I saw him. I don't know whether he had been on a drunk or had the delerium tremens.

The prosecution read in evidence the deposition of Mary Donnelly, as follows:

136	<div style="text-align: center;">THE PEOPLE, vs. VEDDER PETERS.</div>	}	JOHN L. HILL, <i>Dist. Atty.</i> D. C. BEATTIE, <i>for Deft.</i>
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MARY DONNELLY SWORN:

I reside in Patterson, New Jersey. In Oct., 1865, I resided in the city of Schenectady at No. 4 Pine Street. I knew Edward Gleason. He was a brother of mine. He resided with me when at home. I recollect hearing of his

being injured a few days prior to his death. I was then at home. Edward was then in bed. I went to see him immediately. I left my house at 11 A. M., returned twenty minutes before 12 M. I came in the house, took off my things and went to see him. He was in bed in my house; undressed; saw his clothing. His pants and vest were fairly saturated with blood; coat also. He was very faint. He had been washed. 137

Defendant's counsel objects to this testimony as irrelevant.

His face was scratched very much on left side of face. On his neck I saw, as I opened his shirt bosom, three finger marks upon one side of his neck and one finger mark upon the other side of his neck; marks upon each side of his neck dividing under chin. He did not speak while I was in the room. I was in the room occasionally until his death. His tongue was paralyzed. He motioned so I understood that when the next fire came he would pay the person who injured him. We could understand a little that he said. He was so weak from the loss of blood that he could not talk much the first day. I did not see him try to talk the first day. His wife was present when I saw marks upon his neck. I called Dr. Ellwood's attention to them. 138

MARY M. DONNELLY.

Subscribed and sworn before me this 15th day of April 1867.

J. S. LANDON, COUNTY JUDGE. 139

Defendant's Counsel objected to that part which states that deceased was so weak from loss of blood &c., as incompetent. Objection sustained.

DR. MARCH sworn for the prosecution:

I reside in Albany. My profession is practicing physic and surgery. Have been engaged in that business 47 years. I have heard the medical testimony on this trial, and the

testimony that was read on the trial here, and know the symptoms which were detailed by the physicians and other witnesses.

140 Q. What do you say the symptoms which they have given indicate as to the difficulty which caused Gleason's death?

Defendant raised the same objection as before which was overruled and exception duly taken.

141 A. I should think the symptoms depended upon the effusion of blood; that is, he died of symptoms of compression of the brain. From the symptoms given here and the evidence in regard to the injuries, it is my opinion that it was produced by violence. My reasons are these: I suppose I have got to take the testimony of Bearup, that he was kicked three times; once while sitting, twice while lying down. To trace the case along it would strike me that the first violence was sufficient to produce symptoms of concussion, a jar; he was lying while kicked; and while in that defenseless position, unable to enforce any resistance, that he was dragged out of the Engine House and that he lay there from three to five minutes under symptoms of *concussion* of the brain. I only repeat the testimony as I understood it.

Defendant's counsel objected to the witness giving any opinion upon facts of which there was no evidence.

THE WITNESS CONTINUES:

142 I gave it as my opinion, that, from the shock, he would naturally be unconscious for the time being, then, as a natural consequence, when reaction was gone, and a return to his senses, consciousness was restored; he got up upon his knees, oscillated, surged from side to side and raised upon his feet, and at that time the symptoms of concussion of the brain passed off. If I understand the case, the symptoms after he returned to the house detailed by

Dr. Tinker as read, were symptoms of compression of the brain, that is the impairment of the function of the brain and of the body and the fact that there was a convulsive fit, was evidence that he was laboring under compression; this effusion was a symptom connected with some injury to the brain.

Q. What are the facts upon which you base your opinion of violence, as derived from the examination of the body?

A. I think that the evidence from the testimony of the medical men, Drs. Vedder and Ellwood, would show that the effusion of blood and ruptured blood vessel was deeper than the mere scalp itself; it went through the temporal muscle and towards the skull itself. It seems to me, that admitting that the patient lay upon his left side, I don't think that the effusion, although discolorization will take place in the skin, could have found its way into the temporal muscle, except by violence. The same ruptured blood vessel accounts for the blood upon the brain, beneath the skull and outside the *dura mater*, that is the membrane that covers the brain, the interior of the skull. I don't know as I understand whether the blood was between the arachnoid membrane. There are three membranes; one called the *dura mater*, another called the arachnoid, from its extreme tenuity, like the spider web, and the *pia mater*. This thin delicate membrane has two surfaces. The other membrane is the one through which the blood is communicated. Now a rupture that would be superficial, the blood might find its way through the delicate membrane. If it had been between the two surfaces, there was nothing to prevent its being spread.

Q. I think I understand from the testimony that one portion of the brain was smaller than the other. Can you account for that in any way.

A. If there was effusion of blood enough to operate

mechanically, and depress it, I can account for it in that way. Inflammation generally enlarges tissues and softens them, and if that side of the brain was smaller, I can account for it in no other way than that the coagulum pressure upon it. The extreme size of the spleen would not, I should think, tend to throw blood upon the brain. I should think it would have the contrary effect. It is a reservoir, and if it was one-third larger, it would tend to relieve the brain. Where there is a rupture of a blood vessel, the symptoms are first concussion, afterwards consciousness, and then compression. The concussion may be so violent that there would be no lucid interval between the concussion and the compression. Lucid intervals do occur sometimes. The fact that Gleason got up from the sidewalk and walked home is no evidence that the compression of the brain did not result from that injury in the engine house. The lucid interval is a natural result, where the concussion is not sufficient to produce death. A blow upon the outside of the skull may rupture a blood vessel on the inside and not break the skin. I have seen it in several instances. It is not necessary that the skull should be broken in order to rupture a blood vessel on the inside. I should think that the disease of the liver would not have much to do with apoplexy. I did not discover any symptoms or any facts as detailed by the medical testimony, or any of the facts, which in my judgment was sufficient to produce death, except this compression.

Q. Have you any doubt that the violence, the evidences of which were testified to here, produced the compression of the brain?

Defendant's counsel objected as before, which objection was overruled and Defendant by counsel then and there duly excepted.

A. I have not seen anything else.

Q. Then you are pretty clear that the violence which was received did result in compression of the brain?

A. I can see no other way in which it was produced.

CROSS-EXAMINED:

People die with the delerium tremens. I never made a post mortem examination so as to know on what particular part of the system it operated. It wears out the nervous system. It would show on the brain. Irritation of the brain always tends to increase the circulation and makes it more likely to burst. I suppose a long continued intemperance will impair the vital energies generally, and as they are impaired they are weakened.

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Q. In your speaking of the testimony of these witnesses who saw him kick him in the mouth and on the cheek, would it be very likely to produce what the doctors say was a bruise here (on the temple)?

A. If it was inflicted by a kick of the foot, a man's foot will go beyond the cheek.

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Q. I am speaking upon the testimony, that it was confined to the mouth and cheek?

A. Of course, if the force was all confined to the cheek and the mouth, then it would be somewhat difficult to account for the ecchymosis or the effusion of blood on the temporal muscle. A bruise on the temple would produce what they found there. In appoplexy the condition of the pulse is usually slow and full and not easily pressed. The heart goes with a good deal of force. I heard Ellwood speak of the pulse. I understood him to say that there was not much difference in the pulse; not so much as would be found in a case of appoplexy. The symptoms of appoplexy and those of compression of the brain don't differ very much. This blood found upon the brain might have been produced there from natural causes other than a blow. I suppose it might, as from exertion, violent exercise of the mental and physical powers might burst a blood vessel in the brain and the person not re-

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ceive any blow. There may also be all the symptoms described here upon the temple without having the brain affected. The particular causes may exist separately and independent. The condition of the pulse preceding apoplexy is more or less sluggish; a fullness, slower than ordinary, and I suppose there would be strength added to it. There would be more or less drowsiness, a sense of fullness about the head, vertigo, dizziness, sometimes blindness. Intemperate habits tend to apoplexy, to facilitate it, anything that causes excitement as a preternatural flow of blood to the brain. Apoplexy cannot take place unless the brain is gorged with blood.

RE-DIRECT:

The shock upon the cheek could have been sufficient to produce it. Anything that would tend to send the blood up would tend to produce apoplexy.

Q. So that intemperance would be no more likely to produce it than anything else?

A. When a man keeps the steam up all the while there is an unnatural flow of blood to his brain.

Q. The sighing respiration, is that evidence of any particular difficulty about the brain?

A. That is generally what we find is cases of compression of the brain. I do not find it in delerium tremens. If he lost a large quantity of blood it would tend to weaken the pulse.

JOHN F. CLUTE sworn for the prosecution:

I reside in this city. Am Police Justice; was so in October, 1865. Know the defendant Peters. I recollect about the time of the difficulty in question. Peters applied to me for a warrant. It was not against Gleason but three or four other persons for going down to whip him. He

stated that he had been whipping an Irishman, mentioning his name, and they wanted to whip him for that. He named Gleason as the man he had whipped.

The People here rested.

THE DEFENSE:

Defendant's Counsel moved for a discharge of the prisoner on the ground that there was no question for the jury under the evidence; the testimony introduced by the prosecution located the kicking on the cheek and in the mouth, and that there was no proof of any kicking on the temple, and that these named localities were entirely distinct, as much so as the right arm from the left; and that it could not be left to the jury to say that the prisoner inflicted any injury whatever on the temple.

The Court denied the motion and the Defendant's Counsel excepted.

CHARLES H. VAN VRANKEN sworn for the defendant.

I reside in Schenectady. In October, 1865, I resided in Union St., Schenectady. Was an officer of the city then. Was Alderman and Chairman of the Fire Committee which had charge of the city property, including the Engine Houses. The Common Council gave the committee orders to take care of all fire apparatus and when the custodian of the city property was appointed, that they should tell him what his duty was and should see that he did his duty. We appointed the defendant custodian in June, 1865. He was acting as such custodian in October of that year, and he was instructed not to have any loafers lying around there, nor to have any drunken fellows around, young or old; to keep the engine house clean, so that, if anybody went in, they would not find any drunken loafers around on the benches, and we instructed him to throw them out. That was Engine House No. 4.

MARY HOWE sworn for the defendant:

158 I reside in Schenectady, and did in October 1865. On the morning of the 12th of October in that year, I was in a house on Jefferson street. At seven o'clock on that morning, I came over State street bridge. I knew Edward Gleason by sight. I saw him, that morning, come out of a store on the Dock. He came up from there. I don't know where he went. He came up to where I was crossing the bridge. There were marks of blood on his person, on the side of his neck; the right side. He looked kind of drowsy, as if he had been out all night.

CROSS EXAMINED:

159 I did not see Gleason during the night. I do not know where he spent the night. I saw him when he came off the dock. It was not half a block from the place where he came up to where I was standing. It was the other side of Helmer's. I was on the end of the bridge going up towards the hill—the end next to Fuller's Hotel, on that side of the street, going off the bridge, the other man was walking slowly. When I saw the blood on Gleason's neck I was in the house in Jefferson street. I saw it also in the street when he came up from the dock.

DAVID M. MOORE sworn for the defendant.

160 I reside in Schenectady. Gleason was naturally a violent man in his temper, and was particularly inclined to quarrel and fight if he had been drinking some. I believe he was rather a dangerous person to have anything to do with. To dispute with I mean. I would rather give him a wide berth than come in contact with him. His character was that of a professed bully and a fighting man. He was rather tall and well built for strength.

CROSS EXAMINED:

Am not related to Peters, and am no more a friend to his family than to any other in the city.

DR. VAN INGEN sworn for the defendant.

I reside in Schenectady. Am a physician and surgeon, and have practiced for 27 years. The post mortem examinations I have made and those made under me have been as many as ten or fifteen in a day. I know they averaged as many as that at one time. That was in Glasgow, Scotland, in the hospital. The examinations were made under my directions. I have heard the medical testimony of Drs. Vedder, Tinker and Ellwood, giving the symptoms, and their opinions about Edward Gleason, both when he was alive and after he was dead. It has been put in proof here that on the post mortem examination of Edward Gleason, it was found that there was an effusion of blood beneath the surface of the skin in the region of the temple.

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Q. State whether from the things testified to by these Physicians, they indicated that this blood vessel, or this clot of blood upon the surface of the brain, which they found there on the post mortem examination, was the result, necessarily, of violence inflicted or made upon the temple?

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A. In regard to the opinions formed upon the statements of the medical witnesses, my opinion would be only approximate. I would have to add to that the testimony which I heard given in regard to the whole case, the condition of the man from the engine house, tracing him from there to the time of his death, and through the whole post mortem examination; to make the opinions reliable, you would have to go through all of them.

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Q. From all you heard here, from what medical testimony and other facts you have heard in the case, state whether you would draw the conclusion that Gleason received his death from any external violence?

A. I will confine myself to what external violence I have heard testified to; and with regard to kicking in the

nose or mouth of Gleason at the Engine House, I should say that it was a positive benefit to him and prolonged his life. I will explain that in this way. To the question whether any violence caused his death, I would answer I don't know; but with regard to the evidence testified here.
 164 it not only did not cause his death, but it did benefit him and lengthen his life.

Q. Explain to the jury how that was.

165 A. I understand it in testimony that Gleason came into the Engine House, dull, stupid and sluggish, desirous of sleep; that to my mind, the dullness and stupor, was evidence of congestion of the brain. The letting of blood to the extent of from a pint to a quart would relieve him from that and in from one to three or four minutes he would be able to go on his way home. The blood flowing, he rose first to his feet, hands and knees, and then as the
 166 bleeding continued he got more use of his brain; the bleeding from the nose would be the same as bleeding from the arm. This fullness and compression of the brain was relieved by the blood flowing and he was thereby benefitted and enabled to go home, which he would not have been able to do before he received the blood letting. In that way the blood letting was a benefit to him, and enabled him to get home without assistance. I understood the lady to say as she looked from the window that she saw him rising on his hands and knees and staggering around, and then able to go home, and that he did occupy in that way, the time she could run out from the window to the side walk, which was from three to four minutes; but this blood letting in that way, I should give an opinion would benefit him, because, had that patient applied to many eminent practitioners, they would have tried to relieve him by blood letting, or emptying the vessels in some other way. The brain being compressed would incline him to sleep, and the abstraction of blood would tend to relieve it. So the violence which existed and that occurred in the

engine house and the bleeding was a benefit and not an injury.

Q. Would the kicking coming on the mouth, nose, and cheek, produce this injury that is sworn to have been found on the post mortem examination by Dr. Tinker.

A. Taking the evidence as I heard it, that, at the post mortem examination, the nose, lips and eyes were smaller and that there were no marks of extreme violence on the temple, the cheek or any other part of the body, or the search for extreme marks of violence was so accurate that they would detect a mark like a scratch of a pin, and beyond that violence none existed to their vision according to the testimony, that there were no marks of external violence except the scratch of a pin and if the examination was so accurate that there was nothing beyond that. I understood that on the post mortem examination the minutes of which were read, in these minutes the statement was made. I understood the testimony that the nose was puffy and swollen.

Q. State whether the violence as stated to have occurred in the engine house at this particular spot would be competent to produce this ecchymosis between the skull and the scalp?

A. The scalp being denuded and removed, a dark fluid appeared and then this clot of blood. I understood that it was distinctly stated here that upon removing the scalp, the first appearance was fluid running out and then the clot of blood between the skull and the scalp, of certain dimensions and limits. I am speaking of the clot of blood which was said to have been discovered between the skull and the scalp. The question I understood to be put, was, if with the appearance of the scalp, the violence applied at the engine house would cause this clot of blood on the outside of the skull, and if it was not a clot of blood? I can answer it much easier. If a quantity of blood was

found there 18 hours after death, and it was not a clot of blood but a quantity of blood, it must have got there after death. I did understand the medical witness who officiated at the post mortem examination, to say that a certain quantity of blood was found there after death, and if it was not a clot of blood then it must have come there after death. If it had occurred during life, it would have been live blood, living blood, in which was vitality, that would separate into several portions, the solid portion forming a clot and the thinner portion forming a fluid, if it was all liquid, as dead blood will not change, it would remain of a certain consistency. If this was not a clot but mixed up with the filurs and if it lay fluid between this bone and the scalp, then it must have been of necessity after death or immediately at death, during the struggle; because live blood will form itself into solid and serum. I understood it in testimony, that around his neck were greenish and blueish spots, that on turning the body over the whole body was black; that was the most dependent portion, and there this dead blood would flow, and 18 hours after death the most dependent portions would be black, the next blueish and the next greenish. I should say that it would be the natural course of things that this blood would settle after death, black, blueish and greenish as you went up; that would be a post mortem change, or during death becoming more and more apparent; then seeing this discoloration would be no evidence of violence applied to the parts, but that would show being in the most dependent parts. Then, that it should occur on the left more than on the right—the spleen I understood was not healthy, Dr. Vedder swore distinctly that the spleen was too large and the question was put, how it became so, and he did not know. The spleen is a body resembling a sponge, when it is empty it is small, when it is full it is large, when it is large it is gorged, and the blood passing thro' it. If the spleen is enlarged the blood will not pass through it and it makes a dam; in that reservoir the blood was checked up; it could not flow freely through the left

side. If there was evidence of adhesion of the left lung, then that would be another blockade of the blood, and then the tendency would be more to where it was more obstructed than where it was not obstructed. I state it was competent for that blood to exist there in the manner stated by the witnesses, by a post mortem change, or immediately preceeding death. When the tissues begin to give way, being on the left side, the circulation was obstructed as appears by the spleen being abnormal, and if the lungs were diseased and the did not perform their functions, the blood would be more likely to settle on the left side than on the right; therefore it could not be explained rationally, without the supposition of any violence. There is more of that. The spleen was an obstruction, and the diseased lung was an obstruction, but there is more than that; the circulation generally was obstructed by a permanent and fixed and specific disease of the liver, called gin liver. If that organ is obstructed and the blood cannot flow through it, it must flow somewhere else. It might go to the limbs; but the most usual place for the blood when the liver is obstructed, is the brain; the liver lies on the left side overlapping the tubes carrying the blood up and down—and if it is enlarged or if it is obstructed and the blood cannot pass through, in both cases it is an obstruction of the circulation, so that a hearty meal before going to bed will give the person, not the dropsy, but the night mare, palpitation of the heart, and in extreme cases, appoplexy, and death. In nineteen cases out of twenty the blood would go to the heart and lungs and brain, while the twentieth case would produce chronic dropsy. This pressure interfering with the circulation and throwing it on to the heart, lungs and brain, the weakened portions would give way and let the blood ooze out; if those vessels on the surface of the brain, were dense, they would throw it back again; if they were very fragile, the blood would ooze out in a few hours.

Now in this case I wish to be understood in saying that the obstruction as testified to, as having existed, the dis-

ease of the left lung, gorgement of the spleen, and the increased size of the spleen, the weight of it, the liver obstructed, the spleen obstructed, the left lung obstructed, there would be an obstruction in the circulation, and then you would have this blood seeking outlet somewhere, and as the vessels of the body became enfeebled, the blood would find exit in the most enfeebled spot. It is no evidence that the right side of the brain was congested, the left side congested, the whole brain congested with the exception of the uniting point of the two halves; that is the strongest part of the brain; therefore in that spot you would find the least evidence of the oozing of the blood. On the left side of the brain underneath this heavy, dense membrane, which Dr. March describes as the dura mater, or mother of membranes, there it could not get through, it had to be under the membranes and no where else. It sought relief; sought exit and found it and did not reach that clot of blood until after the knife had divided this membrane. The brain being diseased, weakened, the blood oozed from the substance of the brain; only in this little divided spot which was most dense, there they did not find it; but in the other parts which was most fragile, there they found those little red spots and the blood oozed and formed this clot but did not get through this hard membrane which was more dense. I think it would be competent for this blood to find exit through this diseased and broken structure on the left side. And there being no evidence as I have heard, of any marks of external violence at that point, the centre of the clot, nor at its edge even, nor any where else, but the violence stated had been a blow on the cheek. There is the upper cheek and the lower cheek and above that comes the temple. There was no mark there and if it came from violence it would have to have been applied above there because according to the rules of hydrostatics, and they apply to blood as well as water, the tendency would be to flow down, and if there was no violence applied there, and there is no evidence of

it by these medical men; the blood to get there would have
 to run up hill; therefore I would conclude logically that
 the clot or collection of blood both in and out of the sur-
 face did not arise there from violence on simple rules of
 actual science; and the exit from the breaking away of the
 tissues would naturally occur consequent upon this ob-
 struction on both sides, the left being more obstructed by
 the bad condition of the spleen and the bad condition of
 the lung and the liver, and thus seeking relief in some way.
 Dr. Vedder did state that there was an adhesion of the
 left lung to the rib, and I do not know what an adhesion
 is; the older the adhesion is, the stronger, and consequent-
 ly the more obstruction. If it was a recent adhesion, it
 would not afford so much obstruction; but if it was an old
 adhesion it would afford more; but in either case it would
 afford an obstruction. It is the result of disease and it
 works disease, having existed there, not on the right side
 but on the left as I understand it. This was an old adhe-
 sion and therefore strong. Strong and therefore more ca-
 pable of resisting the flow of blood to these parts, and
 therefore you would find more blood on the left side than
 on the right. But there is more than that; it appears in
 testimony, as I understood it, that on the 12th of Octo-
 ber certain injuries were received with certain effects;
 blood flowed and the man went home. Six days after-
 wards a physician was called who found a man with black
 hair and light skin. A light skin would show any mark
 more readily than red skin. He did not find any mark
 where this clot of blood was found after death. This
 white skin did not show any mark on the 12th, neither on
 the 12th nor on the 24th, but after the knife was put
 through there, then they found a collection of blood and
 not before; black hair and white skin and did not show a
 red mark. If there had been any red mark, it would have
 show through. Then here was this white skin and black
 hair contrasting, but no mark of violence could be discov-
 ered which would have been there if it had existed, there-
 fore, I would reason, and I think very correctly, that it

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would have been evident if it had been there. Then the pulse was low, and the breathing low and sighing, not heavy breathing with compression of the brain—not the breathing of apoplexy on the 18th. Now on the 24th the pulse was slow and full and the breathing sturterous, which is the very case which would exist if there was compression of the brain, but never before that had sturterous breathing existed, but the clot of blood on the brain would produce this breathing and the sighing and nothing else would produce it. It did exist on the 24th, but not on the 18th, according to Dr. Tinker's testimony. As the system gave way, it let this blood into the brain and into the cavity existing between the brain and this *dura mater*, the hard membrane, and no further, because it could not get any further. It did not give way on the 18th, because there was no evidence of it. If you knock a man down, his pulse will be slow, his breathing slow, and as you relieve that his breathing will be more natural. This condition of the brain would be the very thing you would expect to find and nothing else; but it is in evidence, as I understood it, that there were several convulsions, and I understood Dr. March to say, were epileptic convulsions, and it is in evidence that the neck was scratched. If his brain was enervated and reduced by intemperance for years, and that he was intemperate for years is shown by the whiskey liver, and if his brain in that condition had been subjected to those terrible spasms, why it would have had this very effect, and from these ruptured vessels you would find these spots. The convulsions I mean were terrible to the brain and not to the spectator. I understood Dr. March to say they were epileptic in their character. Now, we want to know what epileptic is, because on that I predicate my opinion. An epileptic fit is a fit sufficient to make a man fall down; if it approximates that, it would approximate it more or less, because it would be a fit that would deprive him of his senses and make him fall, if it was epileptic in its character, it was more or less of that character and the powers

of nature would be weakened and the blood ooze out in this very fit epileptic in its character. But I do say that this appearance 18 hours after death, the whole back black, blueish and greenish, and then no mark until a knife thrust through this white skin, and the disease of the liver formed there weeks or months or years, and these spots in the stomach showing disorganization there; the stomach parted with its blood showing that the blood vessels were too weak to hold their blood, and therefore had parted with it leaving these yellow spots. The spots could have been made only by something that would discolor it, if there were spots blue, dark or livid, the blood would be there out of the vessels and remain there. These vessels had parted with their blood in the stomach and therefore made these spots. If the vessels were congestive they would not be congestive in spots, because if the surface was blue it would be blue all over and not in spots. If it was only congested in the whole lining of the stomach, it would be uniformly dark; but here there were spots, here and there one different from the color of the other portion of this mucus membrane, so it must follow that these spots could not have existed in any other way than by a deposit of blood. If it was simple congestion of the stomach; if it means simply bringing together some blood then it would be uniform; but if it is in spots, it is not a matter of opinion, but it is an indication that in these spots the blood settled, and no where else, and if the blood will gather in spots in the stomach, it will do so in the brain or under the eye. The blood vessels give way and leave the blood in spots, livid, dark spots. On the brain in this delicate cobweb tissue, the clot of blood was found in this very thin arachnoid membrane. Dr. Vedder testifies he found this clot, and more than that, it occurred from a vessel ruptured. He did find the vessel; and Dr. March testifies that this membrane, in the envelopes of which this clot was found, is as delicate as a cobweb; then in this cobweb, so attenuated from disease, that would be the very spot it would be found. Dr. Vedder states in the

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folds of this tissue this clot was found; exactly the spot where it would be found. How did the blood get through? Why, this delicate tissue gave way. Therefore I would say that would do violence to common sense and physical logic, if I stated any other opinion than just the one given. I would say one thing more, that in my mind from this evidence that had this clot been caused by the violence in the Engine House, he would not have remained without a medical attendant six days, because the symptoms would have been immediately urgent. Dr. Vedder states correctly that apoplexy is always attended with a clot of blood on the brain, but it only occurs in old people, and I simply believe Gleason was a very old man, for I have known him from his infancy, and he made himself prematurely old by his habits, and these facts are evidenced by the examination. If any violence at the Engine House had caused the bursting of blood vessels, the blood would not have been 12 days in oozing out, but it would have burst out spontaneously, with a gush, filling the face under the skull, filling all the little vessels under the brain, filling this arachnoid membrane with blood and filling the stomach with these discolored spots. The stomach, the whole brain, the left part particularly under the scalp and the only place exempt from it was the dense tissue which possesses greater strength and greater powers of resistance.

CROSS-EXAMINED:

Q. Did I understand you to give it as your opinion that these spots upon the stomach was evidence to your own mind that the blood was out of the blood vessels there?

A. Most undoubtedly.

Q. Will your account for the spots upon your cheek as distinctly?

Q. In mental emotions, shame, or fear, or pride, the face will be congested and that will form a blush that will be diffused over the whole face. In fear it will leave the

face and it will be pale. In disease where you have eruptions, there the blood will leave it and be in spots. In shame, the blush, the blood will return and be uniformly red, and in fear it will leave it—but when you have disease of the blood and pimples, the blood goes in spots.

Q. I notice upon the face of several gentlemen your own among others, that the blood does not pass all over the face, that is, the face is not red all alike; my cheek happens to be red, now if I understand you correctly, this congestion would throw the blood evenly all over it; now how is it if the blood is out of its place?

A. The blood out of its place and deposited in spots which makes it more dense, the blood leaving the vessels and collecting in spots, and you have dark spots the same as a black eye; but in the blush—I never saw a spotted blush. Dr. Vedder said these spots, and he located them in the mucus membrane which lines the stomach, and through which membrane the blood vessels run.

Q. You understood him to say that the stomach was healthy?

A. I understood him to say that there were spots in the stomach.

Q. Will you account for what is called the hectic flush upon your theory?

A. The hectic flush is one circumscribed spot more intense at its center, and diffuse towards its edge, shading off; hecetics is not in spots, but it is a spot. I will account for the hectic flush, which is a spot on the cheek larger or smaller, according to the individual; it comes and goes. I never saw a hectic flush on a corpse, nor did I ever see congestion there, except post mortem congestion.

Q. Then I understand that these spots on the stomach must be post mortem?

194 A. By no means; the lobes on the liver had been forming there for years, and they cut through them and they were rough and the stomach had been so for years, and a drunkard's stomach, we have them of all grades, and this man is described as having a drunkard's liver and a drunkard's stomach, and in that stomach you would find these spots. Gleason's symptoms when he entered the engine house, indicated irritability of the brain and congestion of the brain, and consequently quarrelsomeness, and consequently stupor, a desire to sleep, congestion of the brain, relieved by blood letting.

Q. Will you swear that those symptoms were not the symptoms of concussion after the difficulty at the engine house?

195 A. When a man is knocked down, he is knocked down, and he can't be knocked down without a knock, it is a concussion—and if the concussion was on the brain, it would be concussion of the brain.

Q. Will you swear that the symptoms as revealed by the testimony, are not evidence of concussion of the brain after the injury?

196 A. I simply state that you can't knock a man down without concussing him, because concussion signifies a blow, and a blow on the brain is concussion of the brain, which a man may receive a hundred times in a year and never die of it, not even once in one thousand times.

Q. Were those the symptoms of concussion?

A. You can't knock a man down without concussing him.

Q. Then you agree with Dr. March in that respect.

A. No, I don't.

Q. Wherein do you differ from Dr. March?

A. Because I limit the concussion. I agree with Dr. March in a limited sense, and no further. I understood Dr. March to state that there were symptoms of concussion. There is no doubt about that—no two physicians need disagree on that, but what were the consequences of that concussion. All the time the man lay there was the time the woman went down to the street. I have seen men knocked down and lay there half an hour and get up. A concussion occurs every day when a man is knocked down; it occurs in the ring. We are all born without the power to walk, and between the time of birth and ability to walk we concus our brain a thousand times. I should say a hundred thousand times we concus our brain in learning to walk. And when a concussion is severe we have more grave effects following, and then vomiting succeeds, and the brain is relieved and that is the end of it.

Q. Do you think there was unnatural blood upon Gleason's brain when he entered the engine house?

A. I don't wish to say what I think, I wish to say what the testimony in the case conclusively proves.

Q. Do you mean to say that there was blood on his brain when he entered the engine house.

A. I mean to say there was, or else he would not have been in the engine house.

Q. Do you mean unnatural blood?

A. I don't know where he got it from—blood on his brain and blood in his eye, he was a fighting stock. I did not swear on this trial that the blood that passed out from the nose upon the sidewalk there, after the injury occurred, relieved his brain. I stated that it relieved the

200 blood vessels on the brain, which were gorged. When Gleason entered the engine house, there was an abnormal quantity of blood on his brain. According to the testimony of the physicians, and the careful examination they have made, and the testimony in the whole case, that I was led to conclude that the blood found on the outside of the skull, came there either immediately before or during death, or immediately after. When death occurred exactly, none of us know, because the post mortem was not made until eighteen hours after. No post mortem is ever made if it can be prevented, until twelve hours after death; but it is more than human beings can state, whether the blood flowed there at or within twelve hours after his death.

Q. Would not the blood from the left side of the face tend to settle down there just as well as from the other side, if there was no injury there?

201 A. Other things being equal; but you assume that I stated what I did not state. I stated that whether that blood came there before death, at death, or within twelve hours after death, nobody could tell, but somewhere about that time. I think it occurred because there was no evidence of that sturterous breathing until twenty-four hours before death.

Q. Why don't that blood settle down the same as on the other side?

202 A. Because there was a muscle, and the collection of blood would be confined by the temporal muscle, and as I attempted to say the blood would be more likely to settle on the left side, because it was most obstructed and the most dependent parts. I tried to show, by reasoning, upon the statements made here under oath, that that was the logical conclusion, that the blood came there immediately before death, or in the throes of death, or within 12 hours after death.

Q. Why didn't this blood settle down there with the rest?

A. Because I assume, logically I think, from the symptoms evinced, his labored breathing and his full and slow pulse, and after death, the black spots on the back and on this muscle, where they claim marks of violence. I don't know at what precise time the blood settled on this muscle below the temporal bone, but I limit it to the 24th day of October, as having occurred there before death or during the throes of death, or within twelve hours afterwards; but it had not got up to the surface; it was not evident until the knife disclosed it.

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Q. Why did not it occur on the right temple?

A. Because, I have attempted to show that the left side was the weakest and most enfeebled, and in the weakest place you would most expect to find it, and there the surgeon did find it.

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Q. Why was it confined to this spot?

A. Because it was sufficient to relieve the general circulation and it went on and didn't throw any more out.

Q. Is that all the explanation you have to make, as to why there were not other spots of blood here as well as upon the temple?

A. I say that when you bleed a person in congestion, after you get a certain portion of the blood, the congestion ceases.

Q. Does bruised flesh present the same appearance as in the case where blood settles after death? Can you distinguish between the two?

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A. Most undoubtedly, but not with ordinary eyes, or with the eyes of ignorant men; but the microscope will give it very quick. Sometimes the microscope is necessary

206 to detect the difference. It depends on who uses it. A thoroughly skilled physician with extraordinary powers could do more than an ordinary physician. I could in some cases tell the difference between this spot produced by a bruise and a spot by blood settling there after death, and in others I would have to resort to the microscope. It is not a positive thing that a skillful physician could do it. I have heard of and seen physicians who have had to resort to the microscope for that purpose. I have read of such cases. I can't specify the medical work. I have had very little to do with medical works. My knowledge has been derived from other physicians and experience. I know that practical men write very few books.

Q. Can you refer to any medical authorities, holding it as necessary to detect the difference from the appearance of these things to resort to the microscope?

A. I have read very few medical works.

207 Q. Can you refer to any medical work that holds that you must resort to a microscope?

A. I don't put my faith in books. I have no distinct recollection of the microscope being used to detect bloody spots upon the blood, etc.

Q. As a physician do you say these two cases are analogous.

A. I can't go to books because books are very unreliable.

208 Q. Did you ever use the microscope to detect that difference?

A. I have sent specimens to professional gentlemen, such as Professor Chilton.

Q. Did you ever use the microscope to detect that difference?

A. No, because I am not skillful in the use of it, but I have sent to others to use it for me.

Q. You never used the microscope for that purpose?

A. I have, indirectly, through my agents more competent than I am, and I have sent to Professor Chilton, who I think is eminently more capable than I am if I lived for many years. I do state distinctly now, since you refreshed my memory, of putting that very question to Professor Chilton, the question arose in some case, and I was not skilled in the use of the microscope, and I submitted it to gentlemen whether it arose from violence or occurred after death, or from natural causes.

Q. Is there any evidence in this case which you have learned which satisfies you whether this settling of blood, call it clot or not, as you please, was produced after death or before?

A. To my mind it appears very clear, and little difficulty attending it, and I did state that I would limit the time when the testimony showed that it did occur, to 24th October, or thereabouts.

Q. Is it not true that a skillful medical man could determine that question better than you could by hearing the testimony?

A. Not if his reasoning was illogical and inaccurate. I do state distinctly if I used accurate reasoning, and drew logical conclusions, my conclusions would be better than his, if his reasonings were illogical and false.

Q. Do you think there is any evidence in this case that the spleen of Gleason did not perform its functions?

A. Most certainly because it was larger than in a natural condition, death left it in a larger state than it ought to have been, and therefore it was wrong.

Q. You take the position that the spleen didn't perform its functions in your judgment?

A. It could not have performed its functions for it would have been of its natural size.

212 Q. Did I understand you to state that the function of the liver was to act as a reservoir to receive blood?

A. I did state, and so did Dr. March, that the functions of the spleen were unknown, and that the liver among its other functions, acted as a reservoir, and I defy competition on the subject.

Q. Did you mean to say that it is the function of the liver to act as a reservoir for the blood?

A. I say it is one of its functions, it has several.

213 Q. Then you didn't mean to have it understood before, that that was the only function of the liver?

A. I didn't state so, I stated one of its functions.

Q. Don't all organs act as reservoirs just as much as the liver does.?

A. It depends upon what organs they are.

Q. The organs of the brain?

A. I don't understand that.

214 Q. All blood vessels of the brain?

A. All blood vessels are reservoirs most undoubtedly.

Q. Did I understand you to say that when the liver was obstructed or unhealthy, that the tendency was to throw the blood to the heart and the liver?

A. You did distinctly understand me to state so and it is

notorious to all observing men when they find disease of the heart, they look no farther, but if any gentleman will take the trouble to examine, you seldom find a diseased heart without a more or less injured liver.

Q. Does a diseased liver tend to throw blood upon the heart and brain? 215

A. If the liver is diseased so as to obstruct the circulation it acts upon the heart and brain which are two connected organs.

Q. Did you understand the physicians to state that the liver was injured badly?

A. I understood them to say that it had knobs all over it, and it cut crispy.

Q. Did you understand that this liver was injured. 216

A. Why certainly, it was because the surface was covered with lumps, and if they were there it was larger than natural.

Q. How do you know that the commissure spoken of here has the most vitality?

A. I know by knowing the final cause of things, and then that it must necessarily be so, and that it was so because it didn't show signs of decease, it was stronger. From that point flow large nerves and that is the grand centre of life, health and strength, and therefore it does possess more vitality. 217

Q. Did I understand you to say that the adhesion of the lung to the side was any evidence of disease?

A. I did say that that the adhesion of the lung would be an obstruction to the flow of fluids, and as the adhesion was firmer and stronger the greater the obstruction.

Q. Do not the lungs in a healthy person always press against the side in respiration?

A. No sir, and I never stated so, because I have known a pint of fluid between it and the side, and breathing going on all the time.

Q. Is not its tendency constantly then to touch the side?

A. A thing may have a tendency to do it and never do it.

Q. Is not that the case in persons of ordinary health that the lungs do touch the ribs in breathing?

A. If the adhesion is in the lung it could not touch at all points, and if there was anything between it at first it could not touch it, and if it was perfectly dry it would touch it, but it never exists in that state because there is always more or less moisture and therefore there is fluid between the lung and rib, therefore it never does actually touch it anywhere, than the brain touches the skull.

THE WITNESS CONTINUES :

From the testimony in this, it is clear to my mind that the said settling of blood occurred on the 24th of October or thereabouts. There is evidence in this case that the spleen of Gleason did not perform its functions, because it was larger than in a natural condition; death left it in a larger state than it ought to have been and therefore it was wrong. It could not have performed its natural functions, for it would have been of its natural size. It is one of the functions of the liver to act as a reservoir for the blood; it has several functions. I distinctly stated that when the liver was obstructed or unhealthy, that the tendency was to throw the blood to the heart and brain. I understood the physicians to say that Gleason's liver was injured; that it had knobs all over it and that it cut crispy

and these lumps on the surface made it larger. I did say that the adhesion of the lung would be an obstruction to the flow of fluids; and as the adhesion was firmer and stronger the greater the obstruction. The lungs in a healthy person does not press against the side, and no one ever stated so; because I have know a pint of fluid between it and the side and breathing going on all the time. 221

Here the testimony closed.

The defendant's counsel asked the court to charge the jury that Bearup swearing that he saw all that occurred; that Peters kicked Gleason upon the mouth and cheek and did not kick him any where else. The jury could not find from anything in this case that he did kick him upon the temple. 222

The court declined so to charge and defendant's counsel excepted. 222

The jury found the defendant guilty as charged in the indictment. 223

Settled, Signed and Sealed.

J. S. LANDON, [L.S.]
County Judge.

ABM. W. TOLL, [L.S.]
H. M. AIKEN, [L.S.]
Justices of Sessions. 223

[ENDORSED.]

COURT OF SESSIONS.

THE PEOPLE, vs. VEDDER PETERS.	}
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BILL OF EXCEPTIONS.

I certify that there is probable cause for the within Bill of Exceptions.

J. S. LANDON,

County Judge.

Filed March 25th, 1868.

JAMES G. CAW, Clerk.

STATE OF NEW YORK, }
Schenectady County Clerk's Office. }

I, James G. Caw, Clerk of Schenectady County, do hereby certify that I have carefully compared the foregoing with the original writ, and answer of the Judges of the Court of Sessions, and with the bill of exceptions, in the above entitled action, on file in this office, and that the same is a correct transcript of said documents respectively, and contains the whole of said originals.

Witness my hand and seal of said County, this 25th
 [L. s.] day of March, 1868.

JAMES G. CAW, CLERK.